IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.302 of 2004

DATE OF DECISION: NOVEMBER 13, 2006

Kulwant Singh

...PETITIONER

VERSUS

Balhar Singh

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Ms.B.P.K.Brar, Advocate,
for the petitioner.
Mr.Ramesh Sharma, Advocate,
for the respondent.

...

The petitioner, who is the complainant, has filed this criminal revision against the order dated 24.12.2003 passed by the JMIC, Nakodar, whereby the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act has been dismissed in default on account of non-appearance of the counsel or the complainant himself.

I have heard the counsel for the parties and gone through the impugned order.

Counsel for the petitioner contends that on the date fixed i.e. 24.12.2003, the petitioner was not well and accordingly informed his counsel to seek an exemption from the trial Court on that date. However, somehow, his counsel could not reach the trial Court within time and when he went to the trial Court, by that time the complaint was already dismissed in default. Counsel further contends that the trial Court should have adopted more judicious approach and adjourned the case instead of dismissing it in

default. Therefore, the impugned order is liable to be set aside in the interest of justice.

After hearing the counsel for the parties, I am of the opinion that this petition deserves to be allowed. The explanation given by the petitioner appears to be genuine. It is always in the interest of justice that the matter should be adjudicated on merits.

In Shrimati Chander Kanta vs. M/s.Sulekh Chand Sumer Chand, 1978 PLR 423, this Court held that a party cannot be made to suffer for negligence of his counsel. So, the petitioner should not suffer for laches committed by his Advocate.

In view of the aforesaid discussion, this petition is allowed and the impugned order dated 24.12.2003 passed by the trial Court is set aside and the complaint is restored to its original number. The trial Court is directed to decide the complaint of the petitioner expeditiously on merits.

November 13, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE